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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,864	09/09/2003	David J. Houck	Houck 5-2-1-3 (LCNT/12569)	2071
46363	7590	10/26/2011	EXAMINER	
WALL & TONG, LLP/ ALCATEL-LUCENT USA INC. 25 James Way Eatontown, NJ 07724			WU, JIANYE	
			ART UNIT	PAPER NUMBER
			2462	
			MAIL DATE	DELIVERY MODE
			10/26/2011	PAPER

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Art Unit: 2462



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/657,864

Filing Date: September 09, 2003

Appellant: Houck, David et al.

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Eamon J. Wall

For Appellant

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

### **EXAMINER'S ANSWER**

This is in response to the appeal brief filed 8/03/2011 appealing from the Office action mailed 7/19/2011.

#### **(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

#### **(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

#### **(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

#### **(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

#### **(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

#### **(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

#### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

US 20040022237 A1	Elliott et al	02/06/2003
US 20020003779 A1	Szabo	01/10/2002
US Patent # 5781532	Watt	07/14/1998
US 20040252686 A1	Hooper et al	12/16/2004
RFC 3550	Schulzrinne et al.	July 2003

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Claims 1-6** and **9-33** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

**Claim 1** recites the limitation “each of said network paths being associated with respective first gateway egress interfaces and a second gateway system IP address”.

There is insufficient support in the specification for this limitation in the claim.

Note that Appellant stated during telephone interview that the support of this limitation is in page 6, line 18-31, which reads as follows:

Packets traveling to a destination gateway can follow different paths based on the port 206x chosen for the specific RTP flow. The MBCAC algorithm assumes that the selection of a port 206x for an incoming call request is under the control of a call controller in the gateway. Hence, the MBCAC algorithm keeps separate admission policies for the paths from different ports to the same destination gateway. It is also assumed that multiple calls going from a particular port to the same destination gateway follows the same path, i.e., there is no load balancing within the network other than 25 provided by the gateways through the selection of *an egress port*. This assumption can be satisfied if the gateways use the system *IP address of the destination gateway* as opposed to the IP addresses of its ports. In this framework, load balancing is supported by controlling *the egress port at the source gateway* (i.e., first gateway 114). Since each egress port would map into a unique path in the IP network 118, the load from source gateway 114

Art Unit: 2462

to a destination gateway (i.e., second gateway 116) can be partitioned into different paths, resulting in load sharing in the network

However, the above cited text does not disclose the claim limitation “**each path** of said network paths being associated with respective first gateway egress **interfaces**” in claim 1. Note this claim limitation suggests that each path may be associated with more than one egress interfaces, and the specification does not have the support for this limitation.

**Claims 2-6 and 9-33** are rejected because they depend from claim 1.

**Claim 31** recites the limitation “using all of the network congestion parameters”. There is insufficient support in the specification for this limitation in the claim.

Note that Appellant argues the support is in “on Pg. 9, Lines 13 - 16 of Appellants' application, which discusses an admission control algorithm that is used to determine if there is an uncongested path from the first gateway to the second gateway (i.e., looking at more than one, and possibly all, of the paths from the first gateway to the second gateway).”

Page 9 line 13-16 reads “Next, first gateway 114 consults with the admission control algorithm to see if there is a path to the second gateway 116 that is not congested. If first gateway 114 is unable to find an uncongested path to second gateway 116 it sends an error message at step 414 to the soft switch 112...”.

The cited text does not disclose “all of the network congestion parameters”.

Claim 32 has the same problem because it depends from claim 31.

For purpose of continuation of the prosecution, the claims will be interpreted as best understood.

**Claims 1, 3, 5, 14-15, 18, 23, 26 and 33** are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott et al (US 20040022237, hereinafter Elliott) in view of Szabo (US 20020003779 A1).

For **claim 1**, Elliott discloses a method for determining whether to accept a new call (a call between phone 102 and phone 120, FIG. 1) to be routed from a first gateway (gateway 108 of FIG. 1 or 21B; or SS7 Gateway 208 of FIG. 2A) to a second gateway (gateway 110 of FIG. 1 or 21B; or SS7 Gateway 208 of FIG. 2A) in an IP network (VoIP, [0453] and FIG. 1), comprising the steps of:

obtaining, at the first gateway, information indicative of to the quality of service ("latency or packet loss", [0099] in view of Fig. 21B) of voice calls being transmitted from the first gateway to a second gateway via a plurality of network paths between the first gateway and the second gateway (data network 112 of FIG. 1 or 21B that has a plurality of network paths between the two gateways);

determining, using at least a portion of said information, a plurality of congestion status parameters indicative of respective congestion statuses of the network paths ("latency or packet loss", [0099] in view of Fig. 21B); and

Elliott does not specifically disclose determining, using at least one of the congestion status parameters, whether to accept the new call into the network at the first gateway for transmission toward the second gateway via one of the network paths, each of said network paths being associated with respective first gateway egress interfaces and a second gateway system IP address.

In the same field of endeavor, Szabo discloses determining, using at least one of the congestion status parameters, whether to accept the new call into the network at the first gateway for transmission toward the second gateway via one of the network paths (“at least one *performance indicator* value read from the RTCP mechanism does not exceed a pre-set threshold value, the call is accepted”, [0028]), each of said network paths being associated with respective first gateway egress interfaces and a second gateway system IP address (suggested by “a method is described in B. Thompson et al. “Tunnelling Multiplexed Compressed RTP”, Internet Draft, March 2000, Work in Progress, wherein a multitude of RTP/UDP/IP packets are compressed and multiplexed into a so-called PPP packet”, [0005]; note that a UDP/IP tunnel is a path be associated with the IP address and egress port of each of two end points of the tunnel).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply Szabo’s teaching above to the gateways disclosed by Elliott for the benefit of ensuring “a transmission path with acceptable transmission quality” ([0008] of Szabo).

For **claim 14**, Elliott discloses an apparatus (soft switch 204 in FIG. 2 and 3, with circuit being the means for implementing logic in the soft switch) comprising a first gateway for interfacing voice call data from a public switch telephone network to an Internet Protocol network; said first gateway further comprising:

for determining whether to accept a new call to be routed from a first gateway (gateway 108 of FIG. 1 or 21B; or SS7 Gateway 208 of FIG. 2A) to a second gateway

(gateway 110 of FIG. 1 or 21B; or SS7 Gateway 208 of FIG. 2A) in an IP network (VoIP, [0453] and FIG. 1), comprising the steps of:

a first circuit for passing the voice call data to the internet protocol network (the Soft Switch 204 in FIG. 2B);

a second circuit for polling the internet protocol network about traffic information transmitted therein (the Soft Switch 304 in FIG. 2B); and

a third circuit for: calculating, based on the received quality-of-service information, a plurality of congestion status parameters associated with the respective network paths between the first gateway and the second gateway, wherein the congestions status parameters are indicative of respective congestion statuses of the network paths (the circuit in the first gateway responsible for calculating quality-of-service information such as ("latency or packet loss", [0099])); and

obtaining, at the first gateway, information indicative of the quality of service ("latency or packet loss", [0099] in view of Fig. 21B) of voice calls being transmitted from the first gateway to a second gateway via a plurality of network paths between the first gateway and the second gateway (data network 112 of FIG. 1 or 21B that has a plurality of network paths between the two gateways); and

determining, using at least a one of the congestion status parameters\_("latency or packet loss", [0099] in view of Fig. 21B).

Elliott does not specifically disclose determining, using at least one of the congestion status parameters, whether to accept the new voice call into the network at the first circuit for transmission toward the second gateway via one of the network paths



In the same field of endeavor, Szabo discloses determining, using at least one of the congestion status parameters, whether to accept the new call into the network at the first gateway for transmission toward the second gateway via one of the network paths (“at least one *performance indicator* value read from the RTCP mechanism does **not exceed** a pre-set **threshold** value, the **call is accepted**”, [0028]).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply Szabo’s teaching above to the gateways disclosed by Elliott when determining whether to accept a new call or not to ensure the new call will function properly and QoS condition of the network is satisfied.

As to **claim 23**, Elliott in view of Szabo claim 1, Elliott is silent on accepting the new call into the IP network at the first gateway for transmission toward the second gateway via one of the network paths, wherein the new call is accepted into the IP network in the case of the congestion status parameter associated with the one of the network paths not exceeding an upper threshold.

In the same field of endeavor, Szabo discloses accepting the new call into the IP network in the case of said parameter not exceeding an upper threshold (“at least one *performance indicator* value read from the RTCP mechanism does **not exceed** a pre-set **threshold** value, the **call is accepted**”, [0028]; note that RTCP is a protocol for the IP network).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply Szabo’s teaching above to the gateways disclosed by

Art Unit: 2462

Elliott when determining whether to accept a new call or not to ensure the new call will function properly and QoS condition of the network is satisfied.

As to **claim 3**, Elliott in view of Szabo discloses the method of claim 23, Elliott is silent on said new call is not accepted into the IP network in the case of the congestion status parameter associated with the one of the network paths exceeding the upper threshold.

Szabo further discloses said new call is not accepted into the IP network in the case of the congestion status parameter associated with the one of the network paths exceeding the upper threshold (“one performance indicator value **exceeds** a pre-set **threshold value**, the IP telephony gateway **rejects** the **call** in a step 209”, [0028]; note that the performance indicator is a congestion status parameter). The motivation of combination is the same.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to reject a new call in order to reduce the network congestion.

As to **claim 5**, Elliott in view of Szabo discloses the method of claim 1, Elliott further discloses wherein the obtained information comprises, for each of at least one of the network paths, a delay of received packets transmitted from the first gateway to the second gateway via the network path (unacceptable latency, [1493], line 4).

As to **claim 15**, Elliott in view of Szabo discloses claim 14, Elliott further discloses said first circuit further comprises one or more Ethernet cards (“Soft switches 204a, 204b and 204c are connected ... via redundant Ethernet switches”, [0568], which

suggest Ethernet interfaces with software switches as the first circuit) that are connected to the Internet protocol network.

As to **claim 18**, Elliott in view of Szabo discloses claim 14, Elliott further discloses the third circuit determining whether the new voice call is to be accepted into the internet protocol network via the first circuit, by comparing each of at least one of the congestion status parameter to at least one thresholds (Packet Loss Threshold, Table 147 – continued, page 85, where packet loss values can be used as the thresholds for determining if the new voice call is to be accepted or not).

As to **claim 26**, Elliott in view of Szabo discloses claim 1, wherein determining whether to accept the new call into the network at the first gateway is made using call control logic (as discloses in the parent claim 1), wherein the call control logic is updated using the congestion status parameters (this limitation is the same as the last paragraph of claim 1 in that the call control logic is the one that the determining is based on).

As to **claim 33**, Elliott in view of Szabo claim 1, wherein determining whether to accept the new call into the network at the first gateway comprises:

for each of at least one of the network paths, updating a call admission control policy for the network path based on the congestion status parameter determined for the network path; and determining whether to accept the new call into the network at the first gateway based on the updated call admission control policy (as disclosed by the parent claims 1; note accepting the new call “using at least one of congestion status

parameter” is updating a call admission control policy for the network path based on the congestion status parameter).

**Claims 4, 6-10, 19-22, 24-25** and **27-32** are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of Szabo, further in view of Schulzrinne et al., IETF RFC 3550, July 2003 (hereinafter RFC 3550).

As to **claim 4**, Elliott in view of Szabo discloses the method of claim 1, but is silent on the information obtained is a number of sent packets to said second location via the network path, wherein the number of sent packets comprises a number of lost packets, a number of late packets and a number of received packets.

RFC 3550 discloses the information obtained is a number of packets sent to said second location via the network path (Line 1 of the paragraph for “Sequence number: 16 bits”, Page 14, where lost packets are those with missing sequence number), wherein the number of sent packets comprises a number of lost packets, a number of late packets (Line 1 of the paragraph for “Sequence number: 16 bits”, Page 14, where late packets inherently are packets that have been sent, but have not been received according to their sequence numbers) and a number of received packets (sequence number provides information on a number of received packets).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply the teaching of RFC 3550 above to the system disclosed by Elliott in view of Szabo for the benefit of getting detailed information regarding network operation.

As to **claim 6**, Elliott in view of Szabo discloses the method of claim 1, but is silent on the information obtained is a delay variation (variation in the delay, Line 5 of last paragraph in Page 44) of received packets transmitted from said first location to said second location via the network path.

RFC 3550 further discloses wherein the information obtained is a delay variation (variation in the delay in RTCP packet, last paragraph in Page 44) of received packets transmitted from said first location to said second location via the network path.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply the teaching of RFC 3550 above to the system disclosed by Elliott in view of Szabo for the benefit of getting detailed information regarding network operation.

As to **claim 7**, Elliott in view of Szabo discloses the method of claim 1, but is silent on the information is obtained on a periodic basis

RFC 3550 further discloses the information is obtained on a periodic basis ("based on periodic transmission", first paragraph in Page 19).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply the teaching of RFC 3550 above to the system disclosed by Elliott in view of Szabo for the benefit of getting detailed information regarding network operation.

As to **claim 8**, Elliott in view of Szabo discloses the method of claim 1, but is silent on the information is obtained on an exception basis using an immediate report.

RFC 3550 further discloses the information is obtained on an exception basis using an immediate report (Receiver report, first line of Section 6.4 in Page 35). The motivation of combination is the same as described in the parent claim above.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply the teaching of RFC 3550 above to the system disclosed by Elliott in view of Szabo for the benefit of getting detailed information regarding network operation.

As to **claim 9**, Elliott in view of RFC 3550 and Szabo discloses the method of claim 1, but is silent on the parameter including packet lost ratio.

RFC 3550 further discloses wherein the parameter include packet lost ratio (packet lost ratio, Line 1 of 3<sup>rd</sup> paragraph of Section 6.4.4, Page 43).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply the teaching of RFC 3550 above to the system disclosed by Elliott in view of Szabo for the benefit of getting detailed information regarding network operation.

As to **claim 10** and **19**, Elliott in view of Szabo discloses 1 and 14, but is silent on wherein PLR is defined as

$$PLR = \frac{(\text{lost packets} + \text{late packets})}{(\text{received packets} + \text{lost packets} + \text{late packets})}.$$

RFC 3550 discloses, by definition, PLR is the *ratio* of the number of *packets NOT received* to number of the *total packets sent* for a given period of time (such as

Art Unit: 2462

disclosed by “The *ratio of these two* is the packet loss fraction over the interval” in last paragraph of page 43 in RFC 3550); The PLR formula above is simply a math expression of the definition; note that the number of packets that are NOT received equal to the *sum* of the number of lost packets and the number of last packets (*last packets* are the packets that are not received during the time interval but may be received at a later time).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply the teaching of RFC 3550 above to the system disclosed by Elliott in view of Szabo for the benefit of calculating PLR using formula shown above for gaining a better understanding of network performance status.

As to **claim 20**, Elliott in view of Szabo discloses claim 19, Elliott further discloses the traffic processing (including new call setup) depends on QoS parameters, including packet loss performance ([1081]);

Elliott does not explicitly disclose the new call is accepted if PLR is below a given threshold;

however, PLR is just one commonly used QoS parameter;

therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to a new call is accepted if PLR that is (calculated by the third circuit, CPU) is below a given threshold for the benefit of providing reliable network service for users.

As to **claim 21**, Elliott in view of Szabo and RFC 3550 discloses of claim 19, Elliott further discloses the third circuit compares the packet loss ratio;

Elliott does not explicitly disclose the new call is accepted using a reduced bandwidth if PRL is between given low threshold and the upper threshold;

however, PRL is commonly used QoS parameter ([1081]); and Elliott also teaches providing different network services depend on QoS parameters, such as delay and packet loss information ([1088]);

therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to a new call is accepted using a reduced bandwidth if PRL that is (calculated by the third circuit, CPU) is between given low threshold and the upper threshold for the benefit of providing reliable network service for users.

As to **claim 22**, Elliott in view of Szabo and RFC 3550 discloses claim 19.

Elliott does not explicitly disclose the new voice call is accepted if PLR is below a given threshold;

however, PLR is commonly used as a QoS parameter ([1081]);

therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to a new call is blocked if PLR that is (calculated by the third circuit, CPU) is above the upper threshold for the benefit of protecting normal network operation.

As to **claim 24**, Elliott in view of Szabo discloses claim 1, but is silent on the information indicative of the quality of service of voice calls being transmitted from the first gateway to the second gateway comprises a plurality of performance reports associated with the voice calls, wherein determining the congestion status parameters of the network paths comprises: determining, for each of the performance reports, one



Art Unit: 2462

of the network paths with which the performance report is associated; and determining, for each of the network paths, the congestion status parameter of the network path using at least a portion of the performance reports determined to be associated with the network path.

RFC 3550 discloses the information indicative of the quality of service of voice calls being transmitted from the first gateway to the second gateway comprises a plurality of performance reports associated with the voice calls (“sender report (SR) and receiver report (RR)”, 1<sup>st</sup> paragraph of Section 6.4, page 35), wherein determining the congestion status parameters of the network paths comprises: determining, for each of the performance reports, one of the network paths with which the performance report is associated (SSRC\_1 ... SSRC\_n in SR shown in SR packet in Section 6.4.1 of page 36 shows the network path associated with the report); and determining, for each of the network paths, the congestion status parameter of the network path using at least a portion of the performance reports determined to be associated with the network path (one of congestion status parameters “fraction lost”, “cumulative number of packets lost”, and “delay since last SR (DLSR)”, 1<sup>st</sup> paragraph of Section 6.4, page 35).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply the teaching of RFC 3550 above to the system disclosed by Elliott in view of Szabo in order to reduce the network congestion.

As to **claim 25**, Elliott in view of Szabo discloses claim 1, but does not specifically discloses the information indicative of the quality of service of voice calls being transmitted from the first gateway to the second gateway comprises a plurality of

performance reports associated with the voice calls, wherein determining the congestion status parameters of the network paths comprises: for each of at least one of the network paths: selecting only a subset of the performance reports associated with the network path; and determining the congestion status parameter of the network path using the selected subset of the performance reports associated with the network path.

RFC 3550 discloses the information indicative of the quality of service of voice calls being transmitted from the first gateway to the second gateway comprises a plurality of performance reports associated with the voice calls (“sender report (SR) and receiver report (RR)”, 1<sup>st</sup> paragraph of Section 6.4, page 35), wherein determining the congestion status parameters of the network paths comprises: for each of at least one of the network paths (each report is for a path): selecting only a subset of the performance reports associated with the network path (congestion status parameters “fraction lost”, “cumulative number of packets lost”, and “delay since last SR (DLSR)”, 1<sup>st</sup> paragraph of Section 6.4, page 35, are a subset of the report); and determining the congestion status parameter of the network path using the selected subset of the performance reports associated with the network path (congestion status parameters “fraction lost”, “cumulative number of packets lost”, and “delay since last SR (DLSR)”, 1<sup>st</sup> paragraph of Section 6.4.1, page 36, are a subset of the report).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply the teaching of RFC 3550 above to the system disclosed by Elliott in view of Szabo in order to reduce the network congestion.

As to **claim 27**, Elliott in view of Szabo discloses claim 26, but is silent on for each of at least one of the network paths, the call control logic is updated using the congestion status parameter for the network path periodically.

RFC 3350 discloses for each of at least one of the network paths, the call control logic is updated using the congestion status parameter (one of congestion status parameters “fraction lost”, “cumulative number of packets lost”, and “delay since last SR (DLSR)”, 1<sup>st</sup> paragraph of Section 6.4, page 35,) for the network path periodically (“each *periodically transmitted* compound RTCP packet MUST include a report packet”, 1<sup>st</sup> paragraph of page 22, Section 6.1).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply the teaching of RFC 3550 above to the system disclosed by Elliott in view of Szabo in order to reduce the network congestion.

As to **claim 28**, Elliott in view of Szabo discloses claim 26, wherein, for each of at least one of the network paths, the call control logic is updated using the congestion status parameter for the network path on an exception reporting basis (“Sender and Receiver Reports”, Section 6.4 page 35-45; note that Sender and Receiver Reports are exception reporting because they provide exception information like “fraction lost”, “cumulative number of packets lost”).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply the teaching of RFC 3550 above to the system disclosed by Elliott in view of Szabo in order to obtaining useful network information.

As to **claim 29**, Elliott in view of Szabo discloses claim 1, Elliott further discloses the first gateway comprise a plurality of ports (FIG. 1 shows each gateway 108 and 110 has a plurality of ports) associated with the respective plurality of network paths (FIG. 1 shows plurality of network paths via Data network 112), for each network path: for each of at least one voice call being transmitted from the first gateway to the second gateway via the network path (as shown in FIG. 1).

Elliott is silent on, computing a congestion status value associated with the voice call using the obtained information associated with the voice call; and determining the congestion status parameter of the network path using the at least one congestion status value computed for the network path.

RFC 3550 discloses computing a congestion status value associated with the voice call using the obtained information associated with the voice call; and determining the congestion status parameter of the network path using the at least one congestion status value computed for the network path (each voice call has a path and is associated with the specific report that includes congestion status parameters “fraction lost”, “cumulative number of packets lost”, and “delay since last SR (DLSR)”, 1<sup>st</sup> paragraph of Section 6.4.1, page 36).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply the teaching of RFC 3550 above to the system disclosed by Elliott in view of Szabo in order to obtaining useful network information.

As to **claim 30**, Elliott in view of Szabo claim 29, but is silent on the congestion status parameter for the network path is determined by selecting the congestion status

value computed for the network path that is indicative of the greatest amount of congestion on the network path

RFC 3550 discloses the congestion status parameter for the network path is determined by selecting the congestion status value computed for the network path that is indicative of the greatest amount of congestion on the network path (each voice call has a path and is associated with the specific report that includes congestion status parameters “fraction lost”, “cumulative number of packets lost”, and “delay since last SR (DLSR)”, 1<sup>st</sup> paragraph of Section 6.4.1, page 36; e.g., select the greatest amount of delay because all other delay value is irrelevant anymore).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply the teaching of RFC 3550 above to the system disclosed by Elliott in view of Szabo in order to obtaining useful network information.

As to **claim 31**, Elliott in view of Szabo claim 1, but is silent on the determination as to whether to accept the new call into the network at the first gateway is performed using all of the network congestion parameters.

RFC 3550 discloses the determination as to whether to accept the new call into the network at the first gateway is performed using all of the network congestion parameters (each voice call has a path and is associated with the specific report that includes congestion status parameters “fraction lost”, “cumulative number of packets lost”, and “delay since last SR (DLSR)”, 1<sup>st</sup> paragraph of Section 6.4.1, page 36; all these parameters can be used for determination as to whether to accept the new call into the network).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to apply the teaching of RFC 3550 above to the system disclosed by Elliott in view of Szabo in order to obtaining useful network information.

As to **claim 32**, Elliott in view of Szabo and RFC 3550 discloses claim 31, Elliott further discloses on accepting the new call into the IP network at the first gateway for transmission toward the second gateway via one of the network paths (as disclosed by the parent claims 1; note that the new call is always accepted via one the network paths), wherein the one of the network paths for the new call is the one of the network paths having the associated congestion status parameter indicative of the least amount of congestion (as disclosed by the parent claims 1: claim 1 discloses congestion information for different paths among which there is one path that has the least amount of congestion).

**Claims 2 and 13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of Szabo, further in view of Watt (US Patent number 5781532, hereinafter Watt).

As to **claim 2**, Elliott in view of Szabo discloses the method of claim 23, but are silent on wherein new call may be accepted at a reduced bandwidth in the case of said parameter exceeding a lower threshold.

In the same field of endeavor, Watt discloses adjusting transmission rate in response to a “mild” congestion state, as indicated by the value packet loss ratio exceeding a lower threshold but below an upper threshold, “*adjusting* the transmission *rate* in response to the detection of said congestion ... when the detected congestion

Art Unit: 2462

exceeds a predetermined *mild congestion threshold*", from line 21 of col. 7 to line 3 of col. 8).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to accept a new call at a reduced bandwidth in order to fully take advantage of network resource.

As to **claim 13**, Elliott in view of Szabo and Watt discloses the method of claim 2, Elliott disclose further discloses wherein the bandwidth of a newly accepted call is reduced by activating the characteristic of silence suppression for said newly accepted voice call (silence suppression activation timer, table 147 in Page 85).

**Claims 11-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of Szabo and Watt, further in view of RFC 3550.

As to **claim 11**, Elliott in view of Szabo and Watt discloses claim 2, Elliott further discloses using different encoders (CODECs, such as ones supporting G.711, G. 726, and G.728 in [1004]) to handle different connections with different bandwidth ([1004]); which include the case of using 2 different encoders to handle 2 different kinds of calls that have different bandwidth.

As to **claim 12**, Elliott in view of RFC 3550 and Szabo discloses the method of claim 2, but are **silent on** wherein the bandwidth of a newly accepted call is reduced by increasing the packet size for said newly accepted voice call.

However, for a given amount of data, increasing the packet size will decrease the overhead caused by packet header therefore reduce the required bandwidth for the call,

Art Unit: 2462

(this is demonstrated by efficiency factor  $e = (\text{packet\_size}) / (\text{packet\_size} + \text{header\_size})$ ; for a fixed header size, the larger is the packet\_size, the larger is e);

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to increase the packet size so as to decrease the required bandwidth for the call for the benefit of saving bandwidth resource.

**Claims 16-17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of RFC 3550 and Szabo, further in view of Hooper et al (US 20040252686 A1) (hereinafter **Hooper**).

As to **claim 16**, Elliott in view of Szabo discloses the apparatus of claim 14, but are silent on said second circuit is at least one strongarm card.

However, the second circuit is simply a CPU card (such as CPU card of Soft Switch 204, FIG. 2B) that implement the logic of receiving QoS information associated with voice calls, and strongarm is a popular CPU that is commonly used in the CPU cards as disclosed by Hooper ("the core processor implemented as a Strong Arm architecture", [0010]).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to use strongarm CPU card as the circuit disclosed by Elliott for the benefit of cost saving.

As to **claim 17**, Elliott in view of Szabo and Hooper discloses the apparatus of claim 16, Elliott further discloses the CPU card (with strongarm CPU) is connected to the Ethernet card via a host CPU circuit (CPU card of Soft Switch 204 is connected to Ethernet switches 332, [0568], line 1-5 and FIG. 2B).



**(10) Response to Argument**

The following are Examiner's responses to some of Appellant's arguments.

For **Appellant's arguments of I** (page 7-9), regarding rejection of claim 1 under 112, first paragraph, Appellant argues the text starting from line 27 in page 6 of the specification discloses the limitation "each of said network paths being associated with respective first gateway egress **interfaces** and a second gateway system IP address".

In response, **Examiner respectfully disagrees**. The specification text starting from line 27 in page 6 and the relevant Figures showing the first gateway 114 are recited as follows:

In this framework, **load** balancing is supported by controlling the egress port at the source gateway (i.e., first gateway 114). Since **each egress port** would map into **a unique path** in the IP network 118, the load from source gateway 114 to a destination gateway (i.e., second gateway 116) can be **partitioned into different paths**, resulting in **load** sharing in the network.

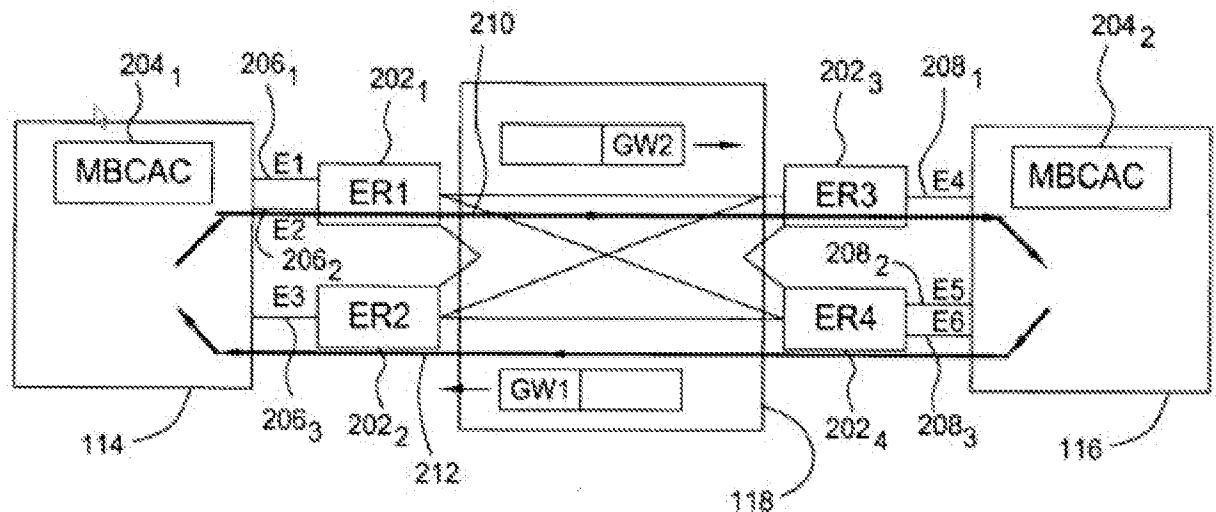


FIG. 2

The text “**each egress port** would map into **a unique path**” clearly discloses that each path may only be mapped into one interface/port. Each path can only be “associated” with **one** interface/port at an end gateway (such as gateway 114 or 116), **NOT multiple interfaces/ports**, as shown in FIG. 2 above. The cited text clearly teaches that a **load** can be **partitioned**, but **not a path**. Therefore, the cited claim limitation is not supported in the specification. In fact, the claim limitation “each of said network paths being associated with respective first gateway egress **interfaces** and a second gateway system IP address” is inconsistent with the common understanding of one of ordinary skilled in the art because each interface/port may have only a unique IP address, and multiple interfaces/ports normally do on share a single IP address.

Furthermore, Appellant did not even response to the 112 rejection in the non final office action. Appellant responses to the 112 rejection only in this appeal brief for the first time, which is not consistent with the guideline according to MPEP.

For **Appellant's arguments of II**, regarding rejection of 1,3,5,14-15,18,23,26 and 33 under 103(a):

a) A.1 for claim 1, Appellant appears to argue that the claim limitation “congestion status parameters” are equivalent to “packet loss ratio, delay and interarrival jitter” because the specification defines so; and Examiner’s interpretation of the claim limitation “latency or packet loss are parameter related to the congestion status of the network” is wrong because they do not include **all** the “congestion status parameters” which include packet loss ratio, delay and interarrival jitter (see page 12); and the motivation of combining Elliott with Szabo fails to have some rational to support the legal conclusion of obviousness (page 14-15).

In response, Examiner respectfully disagrees. First, the contents in specification can not be read into the claim according to MPEP. Second, nowhere in the specification does define that “congestion status parameters” are equivalent to “packet loss ratio, delay and interarrival jitter”. The only place disclosing “packet loss ratio, delay and interarrival jitter” in the specification (in paragraph [0030] of the application publication) is cited as follows:

destination gateway 116 receives the RTP packets generated by the source gateway 114 (e.g., at port E2) and addressed to itself. For each RTP stream, the receiver measures call quality statistics **like packet loss ratio, delay and interarrival jitter** for the stream. The measured statistics are sent back to the source gateway 114 periodically in a special field within the RTP packets or in RTCP packets.

It is clear that “congestion status parameters” is not defined in the specification. The specification teaches that “packet loss ratio, delay and interarrival jitter” are simply examples of the “call quality statistics **like**” parameters, not the congestion status parameters as argued by Appellant. Furthermore, interpreting “latency or packet loss” to be congestion parameters as cited in the final office action is reasonable because “latency or packet loss” show the congestion status (long latency or packet loss are indication of network congestions).

As to the motivation, the final office action clearly states “to apply Szabo’s teaching above to the gateways disclosed by Elliott for the benefit of ensuring ‘a transmission path with **acceptable transmission quality**’ ([0008] of Szabo)”, in which the benefit of combining is clearly stated. Elliot discloses general network operation related to congestion, while Szabo discloses more details information on how to handle specific network congestion. Ordinary skilled in the art would be motivated to apply the teaching of Szabo on the network congestion to the general network disclosed by Elliot in order to provide more detailed information on how to handle specific network congestion.

b) A.2 for claim 14 (page 16), Appellant makes an argument based on claim 1, to which Examiner’s response is the same as with claim 1.

c) A.3 for claim 3,5,15,18,23,26 and 33 (page 16), Appellant makes an argument based on claim 1, to which Examiner’s response is the same as with claim 1.

Art Unit: 2462

d) A.4 for claims 2,4,6-13,16-17,19-22,24-25 and 27-32 (page 17), Appellant makes an argument based on claims 1 and 14, to which Examiner's response is the same as with claims 1 and 14.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

***Conclusion***

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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